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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1955

No. 217

ALEJANDRO CARPENTERO, also known as ALEJANDRO LLANOS,
Petitioner,

vs.

WILLIAM A. HOGAN, Officer in Charge, Immigration and Naturalization Service, Honolulu, Hawaii,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

HYMAN M. GREENSTEIN,
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Attorney for Petitioner.

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WILLIAM A. HOGAN, Officer in Charge, Immigration and Naturalization Service, Honolulu, Hawaii,
Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Alejandro Carpentero, also known as Alejandro Llanos respectfully petitions that a writ of certiorari issue to review a judgment entered against him on

May 28, 1956, by the United States Court of Appeals for the Ninth Circuit, in a cause pending in that Court, numbered and entitled "No. 15089, Alejandro Carpentero, Also Known as Alejandro Llanos, Appellant, vs. William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Honolulu, Hawaii, Appellee."

Said judgment grants the motion of the respondent to affirm the judgment of the United States District Court for the District of Hawaii wherein judgment was entered in favor of the respondent and against the petitioner in an action filed by petitioner for declaratory judgment challenging an order for deportation of petitioner issued against petitioner on the ground that petitioner had last entered the United States as a visitor for business and had failed to maintain his status.

JURISDICTIONAL STATEMENT.

(a) Date of judgment sought to be reviewed: May 28, 1956.

(b) This Court has jurisdiction to review said judgment under 28 U.S.C. 1254(1) and Paragraph 1(b) of Rule 19 of the Supreme Court.

QUESTION PRESENTED.

The question raised and presented by this petition is as follows:

Shall an order of deportation be permitted to stand against an alien lawfully admitted in the United States for permanent residence who temporarily proceeded abroad voluntarily, not under any order of deportation, and who re-entered the United States as a business visitor instead of as a returning resident, which in substance and fact he was?

Expressed more succinctly: shall the *form* or the *substance* of an alien's last entry into the United States be following in applying the strict provisions of the Immigration and Nationality Act?

STATUTES INVOLVED.

Section 241(a)(9) of the Immigration and Nationality Act (8 U.S.C. Section 1251(a)(9)) which provides:

> "Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who was admitted as a nonimmigrant and failed to maintain the nonimmigrant status in which he was admitted or to which it was changed pursuant to section 1258 of this title, or to comply with the conditions of any such status;"

CONCISE STATEMENT OF THE CASE.

Petitioner was born in the Philippine Islands on May 3, 1913. He came to Hawaii to reside on May 9, 1930, and except for a short trip to the Philippines

in 1949-1950, has lived in Hawaii continuously. He is married to a citizen of the United States and has four citizen minor children, all living with him in Honolulu, Hawaii.

He left Honolulu July 30, 1949, for a short trip to the Philippines. He had been issued a visa to return as a resident of the United States which had already expired. He became sick in the Philippines, sought to return, asked for a visa as a returning resident; was either refused or unable to get one at the time, so he returned to Honolulu January 28, 1950 as a "business visitor."

It is this last entry pursuant to the issuance to him of a temporary permit as a visitor for business, which became the subject matter of the deportation proceedings and this appeal.

He was granted extensions of his temporary stay until February 15, 1951, when further extensions were denied because investigations were then underway of criminal activity for which he was later convicted.

Petitioner was convicted of violations of Sections 371 and 1341 of Title 18, U.S.C.

During his imprisonment, proceedings to deport were instituted against petitioner *not on the basis of his criminal activity* but simply on the ground that his last entry had been as a business visitor for a limited period of time and that his time had expired.

Appeal was made to the Board of Immigration Appeals from the order of deportation and various other supplemental applications for relief made before

the Immigration and Naturalization Service, all to no avail.

On January 31, 1956, petitioner filed a complaint for declaratory judgment, in the United States District Court for the District of Hawaii, challenging the order of deportation primarily on the ground that Section 241(a)(9) of the Immigration and Nationality Act (8 U.S.C.A. 1251(a)(9)) is not applicable to a person who was actually a bona fide permanent resident of the United States, who happened to make his last entry through the instrumentality of a temporary permit as a visitor for business.

The entire proceedings had before the Immigration and Naturalization Service, including the original hearings, appeal, requests for rehearing, and applications for discretionary relief were placed in evidence before the trial court.

The jurisdiction of the District Court to hear and determine the cause is sustained by Title 5, U.S.C. Section 1009, and Title 28, U.S.C. Sections 2201 and 2202.

On February 15, 1956, the trial court found in favor of the respondent and against petitioner.

Appeal was duly made to the Court of Appeals, which affirmed the judgment of the Court below as hereinabove stated.

WHY THE WRIT SHOULD BE GRANTED.

Deportation of the petitioner may well deprive him of "all that makes life worth living."[1]

His home and family are in Honolulu.

The decision of the Court of Appeals in affirming the judgment of the Court below gives effect to form rather than to substance. Suppose petitioner actually were a citizen of the United States and could not find his passport at the time he sought readmission to this country—and as a matter of convenience and expediency made his entry by the use of a temporary permit. Under the ruling of the Court of Appeals it would seem that the form of his entry would govern and he could be deported upon expiration of his entry permit.

This is such a far departure from the accepted and usual course of judicial proceedings under our principles of due process of law, that it fairly cries out for the exercise of this Court's power of supervision.

Moreover, it is respectfully submitted that the issues herein present for consideration of this Court an important question of federal law which has not been, but should be, settled by this Court.

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[1]Mr. Justice Douglas' dissenting opinion, *Marcello v. Bonds*, 349 U.S. 302, 99 L. Ed. 1107, 75 S. Ct. 757, citing Mr. Justice Brandeis in *Ng Fung Ho v. White*, 259 U.S. 276, 66 L. Ed. 938, 42 S. Ct. 492.

PRAYER FOR ISSUANCE OF WRIT.

Wherefore, petitioner prays that this Court issue its writ of certiorari directed to the United States Court of Appeals for the Ninth Circuit commanding said Court to certify and send to this Court on a day certain, to be therein designated a full and complete transcript of the record and proceedings of the cause numbered and entitled in said Court "No. 15089, Alejandro Carpentero, Also Known as Alejandro Llanos, Appellant, vs. William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Honolulu, Hawaii, Appellee," to the end that said cause may be reviewed by this Court as provided by law, that said judgment of said Court of Appeals be reversed and that your petitioners have such other and further relief in the premises as may seem just.

Dated, Honolulu, Hawaii,
June 25, 1956.

Respectfully submitted,
HYMAN M. GREENSTEIN,
Attorney for Petitioner.

(Appendix Follows.)

Appendix

(R. 26)

United States Court of Appeals
for the Ninth Circuit

No. 15,089

Alejandro Carpentero, also known as Alejandro Llanos,
Appellant,

vs.

William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Territory of Hawaii,
Appellee.

Before: Denman, Chief Judge, Pope, Circuit Judge, and Solomon, District Judge.

Per Curiam:

It appearing that the appeal here is without merit, the motion of the appellee to affirm the judgment should be granted, and it is ordered that the judgment is affirmed with costs against appellant.

/s/ William Denman
Chief Judge.

/s/ Walter L. Pope
Circuit Judge.

/s/ Gus J. Solomon
District Judge.

(Endorsed:) Filed May 28, 1956.

Paul P. O'Brien,
Clerk

(R. 27)

United States Court of Appeals
for the Ninth Circuit

No. 15,089

Alejandro Carpentero, also known as Alejandro Llanos,
Appellant,

vs.

William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Territory of Hawaii,
Appellee.

JUDGMENT

Appeal from the District Court for the Territory of Hawaii.

This cause came on to be heard on the Transcript of the Record from the District Court for the Territory of Hawaii, and on motion of appellee to affirm and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed:) Judgment. Filed and Entered: May 28, 1956.

Paul P. O'Brien,
Clerk

(R. 13-16)

In the United States District Court
for the District of Hawaii

Civil No. 1462

Alejandro Carpentero, also known as Alejandro Llanos,
Plaintiff,
vs.
William A. Hogan, Officer in Charge, Immigration and Naturalization Service, Honolulu, Territory of Hawaii,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above cause having come on regularly for hearing on February 15, 1956, the Honorable J. Frank McLaughlin presiding without a jury, no jury having been requested, the Plaintiff appearing by his attorney, Hyman M. Greenstein, Esquire, and the Defendant appearing by his attorneys, Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight, III, Assistant United States Attorney for the District of Hawaii, the said cause having been heard on February 15, 1956, and the evidence having been introduced on behalf of the Plaintiff and Defendant, and the Court having considered

the same, and having heard the arguments of counsel, and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

Findings of Fact

I.

The Plaintiff is an alien, a native and citizen of the Republic of the Philippines.

II.

The Plaintiff last entered the United States at the port of Honolulu, Territory of Hawaii, on January 28, 1950, and was admitted under Section 3(2) of the Immigration Act of 1924 until June 28, 1950, and was granted an extension of the term of his admission until February 15, 1951.

III.

Application for further extension of stay was denied on October 27, 1952.

IV.

The Special Inquiry Officer found Plaintiff to be subject to deportation on the ground that after admission to the United States as a non-immigrant, to wit, a visitor for business under Section 3(2) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

V.

The findings of the Special Inquiry Officer and his decision ordering deportation were based upon reasonable, substantial and probative evidence.

Conclusions of Law

I.

This Court has jurisdiction to hear and determine the within cause under Title 5, United States Code, Section 1009, and Title 28, United States Code, Sections 2201 and 2202.

II.

Plaintiff had the status of a visitor for business under Section 3(2) of the Immigration Act of 1924 when he entered the United States on January 28, 1950, and his deportation as a visitor who has not maintained his status is in accordance with law.

III.

A Special Inquiry Officer has the power to order deportation of an alien, both by law and the regulations promulgated thereunder.

IV.

The expiration of Plaintiff's extension of stay on February 15, 1951, violated Plaintiff's status as a business visitor and consequently made him subject to deportation.

Let judgment in favor of the Defendant and against the Plaintiff be entered accordingly.

Dated: Honolulu, T. H., this 2d day of March, 1956.

/s/ J. Frank McLaughlin,
Judge, United States District Court.

Receipt of copy acknowledged.

(Endorsed): Filed March 2, 1956.

(From Petitioner's Exhibit 1)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A-4 047 976—Honolulu December 3, 1953

In re: Alejandro Carpentero
alias Alejandro Llanos

In Deportation Proceedings

In Behalf of Respondent:
Hyman M. Greenstein, Esquire
National Building
Honolulu, T. H.

Charges:
Warrant: Immigration & Nationality Act—
Failed to maintain status—Visitor
Lodged: None

Detention Status: Inmate, Oahu Prison, Honolulu T. H.

Warrant of Arrest Served: October 20, 1953

Discussion: This record relates to a 40-year old native and citizen of the Republican of the Philippines who last entered the United States at the Port of Honolulu, T. H., on January 28, 1950 via P.A.A. plane, at which time he was admitted as a visitor under Section 3(2) of the Immigration Act of 1924 until June 28, 1950. He was granted extensions of the terms of his admission until February 15, 1951. An application for a further extension of stay was denied on October 26, 1952, decision in the application having been withheld at the request of the United States At-

torney in order that the respondent's activities could be investigated (Exhibit 5). The charge contained in the warrant of arrest is sustained.

The respondent is now an inmate of Oahu Prison, Honolulu, T. H., as a result of his having been sentenced to 5 years and 5 days imprisonment for violations of Title 18, U.S.C., Sections 371 and 1341 (Exhibit 4). His conviction is now pending before the United States Supreme Court on a petition for a writ of certiorari (pg. 11). The alien formerly resided in Hawaii from May 9, 1930 (Exhibit 13) until July 30, 1949 (Exhibit 14 & pg. 5) when he left Hawaii in possession of a reentry permit which had expired on July 1, 1949. His testimony (pg. 10) indicates that he applied for a visa as a returning resident but that issuance was refused. The respondent is married to a naturalized citizen of the United States and has four native born children, ranging in ages from 7 to 13 years. He did not apply for suspension of deportation or voluntary departure and is not eligible for either privilege.

Findings of Fact:

Upon the basis of the evidence presented, it is found:

(1) That the respondent is an alien, a native and citizen of the Republic of the Philippines;

(2) That the respondent last entered the United States at the port of Honolulu, T. H., on January 28, 1950;

(3) That the respondent was admitted under Sec. 3(2), Immigration Act of 1924, until June 28, 1950 and was granted extensions of the terms of his admission until February 15, 1951;

(4) That the respondent's application for a further extension of the terms of his admission was denied.

Conclusion of Law:

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under Section 241 (a) (9) of the Immigration and Nationality Act the respondent is subject to deportation, in that, after admission to the United States as a nonimmigrant, to wit, a visitor for business, under Section 3(2) of the Immigration Act of 1924, he failed to comply with the conditions of such status.

Order: It is ordered that the respondent be deported from the United States on the charge contained in the warrant of arrest.

/s/ F. Arnold
F. Arnold
Special Inquiry Officer.

(From Petitioner's Exhibit 1)

U. S. DEPARTMENT OF JUSTICE

Board of Immigration Appeals

File: A-4047976—Honolulu Nov. 8, 1954

In re: Alejandro Carpentero alias Alejandro Llanos

In Deportation Proceedings

In Behalf of Respondent:

Hyman M. Greenstein, Esquire
National Building
Honolulu, T. H.

Charges:

Warrant: I&N Act—Failed to maintain status—visitor

Lodged: None

This is an appeal from an order by the special inquiry officer directing that the respondent be deported on the charges contained in the warrant of arrest.

The respondent was born in the Philippine Islands on May 3, 1913. He came to Hawaii to reside on May 9, 1930, and except for a business trip to the Philippines in 1949-1950 has lived in Hawaii continuously. He last entered this country on January 28, 1950 at the port of Honolulu, at which time he was admitted as a temporary visitor, after his inability to obtain a visa as a returning resident in the Philippines. He is married to a citizen of the United States and has four citizen children. He is presently an inmate of the Oahu Prison, Honolulu, T. H.

Counsel, in brief on appeal, contends that the respondent is not an alien within the meaning of the Immigration and Nationality Act and is, therefore, not subject to deportation. In support of his contentions, counsel makes the following points: (1) that at the time of his arrival in the United States, respondent was not an alien but a national of the United States; (2) that having once acquired the status of a national, respondent could not lose that status except by a specific act of Congress; (3) and that the Immigration and Nationality Act does not authorize respondent's deportation. In support of his first point he has cited the cases of *Cabebe v. Acheson,* 183 F. 2d 795, (C.C.A. 9), *Del Guercio v. Gabot,* 161 F. 2d 559 (C.C.A. 9) and *Mangaoang v. Boyd,* 205 F. 2d 553 (C.C.A. 9). He has cited the *Mangaoang* case in justification of his second and third points.

We take no issue with counsel's first point. However, the *Mangaoang* case does not stand for the propositions set forth in points two and three. In that case the United States Court of Appeals stated:

> Upon the Proclamation of the Philippine Independence on July 4, 1946, Filipino nationals of the United States lost the status of nationality whether they were then inhabitants of the Island or domiciled in the United States.

In *Gonzales v. Barber,* 207 F. 2d 298 (C.C.A. 9), (affirmed by the Supreme Court, 74 S.Ct. 822, June 7, 1954), the same Court of Appeals, in disposing of an identical contention, was equally emphatic when it stated:

Gonzales next contends that he is not within the statutory class referred to in the deportation order. He claims that he is not an alien but a national of the United States. This contention is without merit. Gonzales became an alien on July 4, 1946 upon the Proclamation of Philippine Independence.

In the light of the *Mangaoang* and *Gonzales* cases, it is clear that the respondent was an alien at the time of his last entry. He is, therefore, deportable on the charge stated in the warrant of arrest and the appeal will be dismissed.

Order: It is ordered that the appeal be and the same is hereby dismissed.

Chairman.